

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF TENNESSEE
AT KNOXVILLE

MEMORANDUM AND ORDER

All pretrial motions in this case have been referred to the undersigned pursuant to 28 U.S.C. § 636(b) for disposition or report and recommendation regarding disposition by the district court as may be appropriate. This matter came before the Court on October 3, 2006, for consideration of Defendant Andrade's Motion To Continue Trial [Doc. 31]; Defendant Tipton's Motion To Continue Trial [Doc. 30]; Defendant Andrade's Motion To Extend Motion Cut-Off Deadline [Doc. 26]; Defendant's Strange's Motion To Join Co-Defendant's Motion To Extend Cut-Off Deadline [Doc. 28]; and Defendant Tipton's Motion To Continue Motion Deadline [Doc. 25]. Assistant United States Attorney David Jennings was present representing the government. Attorney Jonathan Moffatt was present representing Defendant Andrade and Attorney Wade Davies was present representing Defendant Tipton. Defendants Andrade and Tipton were also present. Attorney Donny Young and Defendant Terry Strange were not present at the hearing.

In their motions [Docs. 30 and 31], Defendants Andrade and Tipton request a

continuance of the trial of this matter set for October 5, 2006. In support thereof, counsel for Defendants indicate that they continue to investigate issues related to this case and that additional time will permit the parties to explore making a full resolution of the case against Defendants. At the hearing, the Court contacted Attorney Donny Young, counsel of record for Defendant Strange, by phone and Mr. Young orally joined in Defendants Andrade and Tipton's motions to continue [Doc. 30 and 31]. Defendants also move [Docs. 25, 26 and 28] for an extension of the motion cut-off deadline in order that they may review all of the discovery provided by the government, including approximately 2,500 telephone recordings, and assess the need for filing motions in this case. Counsel for the government had no objections to the requested continuance or extension of the motion cut-off deadline.

The Court finds that Defendants motions [**Docs. 25, 26, 28, 30 and 31**] are well taken, and they are **GRANTED**. The trial of this case was set for October 5, 2006. Counsel for all parties agreed and the Court finds that the ends of justice served by granting the motions [Doc. 30 and 31] outweigh the best interests of the public and Defendants in a speedy trial. 18 U.S.C. § 3161(h)(8)(A). The Court finds that the failure to grant a continuance would deprive the parties of adequate time to complete their review of discovery, to assess the need to file motions in this case and to effectively prepare for trial. 18 U.S.C. § 3161(h)(8)(B)(iv). The Court further finds that the failure to grant a continuance in this case would result in a miscarriage of justice. See 18 U.S.C. § 3161(h)(8)(B)(i). In light of these findings and its granting of the motions, the Court set a new trial date of **February 22, 2007**, and set a new pretrial conference for **February 1, 2007 at 9:30 a.m.** The Court also finds that the period of time between the filing of Defendant Tipton's September 28, 2006, motion and the new trial date of February 22, 2007, is fully excludable time

under the Speedy Trial Act for the reasons set forth herein. With regard to further scheduling, the motion-filing deadline is extended to **October 17, 2006**. Responses are due on or before **November 7, 2006**.

Accordingly it is **ORDERED**:

- (1) Defendants motions [**Docs. 25, 26, 28, 30 and 31**] are **GRANTED**;
- (2) The trial of this matter is reset to commence on **February 22, 2007 at 9:00 a.m.** before the Honorable Thomas Phillips, United States District Judge;
- (3) All time between the filing of Defendant's **September 28, 2006** motion, and the new trial date of **February 22, 2007**, is fully excludable time under the Speedy Trial Act for the reasons set forth above;
- (4) A pretrial conference is scheduled for **February 1, 2007 at 9:30 a.m.** before the undersigned;
- (5) A new motion deadline is set for **October 17, 2006**; and
- (6) Responses are due on or before **November 7, 2006**.

IT IS SO ORDERED.

ENTER:

s/ H. Bruce Guyton
United States Magistrate Judge